

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, November 5, 2012**  
**Kitty Hawk Town Hall, 6:00 PM**

**AGENDA**

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Fiscal Year 2011-12 Audit Report
5. Presentation of 2012 Hazard Mitigation Plan Update
6. Public Comment
7. Consent Agenda:
  - a.) Approval of October 1, 2012 Regular Meeting Minutes
  - b.) Revenues and Expenses Report for September 2012
  - c.) Tax Pickups and Releases
  - d.) Municipal Records Retention and Disposition Schedule Adoption
  - e.) Donation to the Police Department
8. Items Removed From the Consent Agenda
9. Unfinished Business:
  - a.) Text Amendment: Proposal to add Subsection 42-252(c)(17) allowing "electronic gaming operations" as a conditionally permitted use in the Community Shopping Mall/Center (BC-3) district, provided that certain criteria are met. **(Ordinance No. 12-10)**
10. New Business:
  - a.) Amendment to the Town Code: Sections 18-7, 24-53, 24-54 and 24-55/Carrying Concealed Weapons **(Ordinance No. 12-11 and Ordinance No. 12-12)**
  - b.) Post-Hurricane Sandy Permit Fees
11. Reports or General Comments from Town Manager
  - a.) Report of Town's Response to Hurricane Sandy
  - b.) Town Utilization of YouTube for Communication Purposes
  - c.) Letter Sent to Division of Environment and Natural Resources for Justification of Policy Changes
  - d.) Compliment about Performance of Officer Deaton
12. Reports or General Comments from Town Attorney
13. Reports or General Comments from Town Council
14. Public Comment
15. Adjourn

**COUNCIL MEMBERS PRESENT:** Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz, and Councilman Richard Reid

**STAFF MEMBERS PRESENT:** Town Manager John Stockton, Town Clerk Lynn Morris, Attorney Starkey Sharp, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, PW Director Midgett (Fire Chief Lowell Spivey absent)

**Kitty Hawk Town Council Minutes: November 5, 2012**  
**Page 2**

**1. CALL TO ORDER**

Mayor Perry called the meeting to order at 6:00 p.m. and welcomed everyone.

**2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE**

Following a moment of silence the Pledge of Allegiance was recited.

**3. APPROVAL OF AGENDA**

**MPT Perry made a motion to approve the agenda as promulgated. Councilman Bateman seconded the motion and it passed unanimously, 5-0.**

**4. FISCAL YEAR 2011-12 AUDIT REPORT**

Teresa Osborne, Dowdy & Osborne, LLP, CPA's: *I am here tonight to present the results of your June 30, 2012 audit. The town has once again received an unqualified opinion on its financial statements and no negative findings related to the audit. This is the best opinion that you can receive on your financial statements.*

*Pages one and two are the audit opinion. It is the report that states the unqualified opinion. Pages fifty and fifty-one are what we call the compliance report and if there are any material weaknesses or significant deficiencies those would be noted there. However there are not any and that is a clean report as well. Pages three through nine is what we call the management discussion and analysis; a narrative summary of the different parts of the audit. Pages ten through twelve are the government-wide financial statements. They are the basic governmental financial statements which have been adjusted to include all assets and debt of the town. I am going to skip over those because those are not the ones that really tell us the bottom line numbers that we need in governmental accounting.*

*On page sixteen, exhibit five, I want to go over the budget to actual for the general fund. In the actual column, the third column over, expenses in the general fund exceeded revenues by \$259,154. This was after a transfer to the capital reserve fund of \$157,592. You planned to use \$650,289 in fund balance but because some revenues came in over budget and some expenses came in under budget, you only ended up using \$259,154 in the assigned fund balance. You came in significantly under what you had planned to use going into the year.*

*If you will look at the final budget, which is the second column, and the actual column, which is the third, that revenue number is \$5,945,004. That is approximately \$450,000 over the prior year and is primarily because of money for Hurricane Irene last year. The town ended up with about \$450,000 in FEMA reimbursements accompanied by about another \$150,000 in insurance reimbursements last year.*

*Property tax revenues reflect a decrease of about \$18,000 due to a reduction in the collection of prior year tax revenues and is simply because the tax revenues in the prior years have pretty*

**Kitty Hawk Town Council Minutes: November 5, 2012**

**Page 3**

*much been collected and there is just not a whole lot out there right now. The tax collection rate was 99.29% which is an excellent rate in this economy.*

*Shared revenues including sales, occupancy and land transfer taxes stayed basically flat for the town last year as a result of tax increases in the prior year by neighboring towns. Other unrestricted intergovernmental revenues showed a slight decrease. Total expenditures in the general fund increased \$450,000 and again most of this was related to Hurricane Irene. There were some major capital expenses in the prior year which was offset in the current year by upgrades to financial software and the addition of part-time firemen.*

*On page thirteen is the balance sheet for the general fund. At the bottom of the general fund column you will see the unassigned fund balance at June 30, 2012 is \$4,096,526 and represents 68% of total general fund expenses for the fiscal year. The board has adopted a fund balance policy that further restricts unassigned fund balance by setting aside an additional 3.5 million for emergencies. There is a detailed note on page thirty-four that shows this as a reduction from your total fund balance leaving \$596,526 available for appropriation. I want to point out that even though the 4 million, ninety-six is what shows as assigned there are some notes that show further restricted funds resulting in the net balance available for appropriation.*

*On pages seventeen and eighteen information is shown on the law enforcement officer's pension trust fund and the firemen's relief fund. Pages nineteen to thirty-four are the notes to the financial statements. That is where you can find more detailed data on some of the numbers that are in the financial statements.*

*The remaining pages of the report in the back show all of the information that you see up front, just in greater detail. You are going to see a lot of line item detail in those reports. I think for your purposes the two things that are the most significant and most important are the amount of fund balance you plan to use versus what you used. And then the amount of unassigned fund balance that is left after you pull out the 3.5 million dollars is \$596,526. All in all I would say the town ended the year in strong financial shape. The town has managed to maintain its tax rate in spite of declining revenues by cutting and holding the line on expenses.*

*I want to thank the finance department who provided invaluable assistance to me. Good work to them and to everybody at the town.*

**MPT Perry:** *On page thirty-eight is an actuarial. What is your recommendation on how often they have to be done in order to keep up? I ask this because I am on the tourist bureau and they are thinking about doing them more often.*

**Osborne:** *You are required to have it done every three years and the last time the town's was done was 12/31/2010. It can be used for Fiscal Years '11, '12 and '13. It is going to be valid for one more year. I would suggest waiting until that three year period is up and the reason is because you have made some recent changes to your retiree benefits. I would let things level out and then go ahead and have that study. That is going to change your numbers and I think you are going to be okay to use that study one more year.*

**Kitty Hawk Town Council Minutes: November 5, 2012**

**Page 4**

**Klutz:** *The law enforcement officer's special separation allowance ... right now we are funding it and is that based on a State provided requirement? They tell us how much or is it based on something we do to figure out how much money we would have to put aside?*

**Osborne:** *It is actually based on the same type of actuarial valuation that you have done for your retiree health insurance. In fact the same company that does the one for retiree health also does the one for the law enforcement officer separation allowance. The number you see that is required to be funded comes directly from that study.*

**Klutz:** *The study will have taken into account that we are about to have additional retirees and they will keep up in terms of the requirement for that contribution? We do not have to worry that we are not funding it?*

**Osborne:** *You should not as long as you keep funding according to the actuarial study. That particular study is required every year because there can be so many changes in the makeup of your employees. That particular study has to be done every year so it stays very current. And I want to say that you have a very ... you are almost fully funded. Your net pension obligation at the end of the fiscal year is \$94,000. There may have been a couple of years in the very beginning when the full amount was not funded but in the scheme of things \$94,000 is not a huge amount.*

**Klutz:** *The separation allowance percentage contributed is on page thirty-six. We have 81% one year and 56% of the required contribution ...*

**Osborne:** *The annual required contribution for the June 30, 2012 fiscal year was \$39,143 and what you actually contributed was ...*

**Klutz:** *What we contributed was 140% of the required contribution. Were we trying to catch up?*

**Osborne:** *It has to do with the fact that you are a year behind. The study is done and it tells you what you are supposed to contribute for the coming year and then you have a new study done and it may change again because of the employee makeup. What you actually contributed that year was \$54,959 which was 40% more than what you were required to contribute.*

**Klutz:** *The answer is we are doing what we are supposed to be doing.*

**Osborne:** *You are doing what you are supposed to be doing.*

**Klutz:** *The other item is on page thirty-seven and I guess this is a comment for council. Are we at the point where we have to start putting money aside every year for this? These are some huge numbers.*

**MPT Perry:** *First let the auditor do that and then if necessary ...*

**Kitty Hawk Town Council Minutes: November 5, 2012**

**Page 5**

**Osborne:** *There is no statutory requirement that you set the money aside. The only requirement is that you have the study done to determine what the liability is. There are many different theories on how this dollar amount is calculated. It is still relatively new; we just finished our third full year of it. There are many conversations among municipal finance officers as to the validity of it. I would say it is something that has not totally settled itself out yet. I will tell you that you are not in a unique situation in not funding it. A majority of places have not funded it and are only recording it.*

**MPT Perry:** *This is my understanding of not funding it. One of the reasons is because if you funded for all of the employees you have, and there is a turnover of employees, you may have a fund that you cannot do anything with if those employees do not stay with you for a set amount of time. Am I correct?*

**Osborne:** *I think that is partially correct. I do not think there is much risk of overfunding it when you look at the levels that are required to fund it. In all likelihood if you started putting some aside you probably would not be putting the full amount aside anyway. I do not think you are going to find yourself in a situation where you are over funded. Whatever you put into that fund can be used to pay retiree benefits and it does not matter what particular employee it was set aside for.*

**MPT Perry:** *But that is the only thing it can be used for.*

**Osborne:** *Correct.*

**MPT Perry:** *And that is the hesitance as I understand it.*

**Osborne:** *I think that is a part of the hesitancy and the other part is just budget constraints. Many local governments say they have been doing it on a pay as you go basis for the last 30 years and we have not had a problem with it. A thought is that with the baby boomer generation we are going to start have more retirees eligible for this benefit and towns are going to start accruing it at a faster rate than in the past.*

**Mayor Perry:** *Who actually holds that money if you do set it aside?*

**Osborne:** *In North Carolina you have to put that money aside with the State treasurer.*

**Mayor Perry:** *So they then have control over it.*

**Osborne:** *I do not know that they have control over it but ... it is still an investment that is in your name and you can only invest it in a State registered fund.*

**Eubank:** *When you fund it the money is there when you need it and you can request transfers out. There are management fees involved in this because it is third party managed. We do not have any control over that and it is supervised by the State treasurer just like our pension fund is. I think North Carolina Cash Management Trust is one that we would probably fall back on.*



**Kitty Hawk Town Council Minutes: November 5, 2012**

**Page 6**

**Osborne:** *It is not like the law enforcement officer's separation allowance where you are actually allowed to hold the money here locally.*

**MPT Perry:** *And that is the key.*

**Mayor Perry:** *We have no control over it once it is gone.*

**Osborne:** *I suggest giving it a little bit longer and see how this plays itself out. I will be staying in tune to any changes that happen over the next year or so and will bring you updated information when I come back next year.*

**Klutz:** *The last item is on page forty-six and is a negative balance for Sandy Run Park.*

**Osborne:** *That has to do with the timing of the requesting of the grant reimbursements. It will work itself out in this fiscal year and it probably already has. It was very small and immaterial to the total fund and has to do with the timing of those reimbursements.*

**Mayor Perry:** *Anybody else?* Hearing no further questions, Mayor Perry thanked Mrs. Osborne.

**5. PRESENTATION OF 2012 HAZARD MITIGATION PLAN UPDATE**

**Heard:** *On an annual basis the Planning and Inspections department works with the Community Rating System and its related agencies on all of the things we do as a town to help reduce the insurance rates for our citizens. We have most recently been granted a low score and the citizens are paying lower rates. One of the things we have to do is put together a good deal of information to let them know what we are doing to achieve some of the goals they set for us to be sure we are still getting the points they have assigned.*

*Part of this is a review of our hazard mitigation plan. In years past we have only had to provide them with that information. Last year we gave council a copy of the report and this year we are required to present it to you at a public meeting. To highlight a few of the things the town has done toward achieving flood damage prevention and dealing with other hazards includes maintaining and repairing sand fencing along the beach, developing a Stormwater Management Plan, review of the Storm Preparedness, Response and Recovery Plan, advising contractors, homeowners and other interested parties on ways they can reduce flood damage and things they can do to help protect themselves and their valuables before and during a storm. Developing and sending out an outreach brochure twice a year, putting information on the website and putting articles in the town newsletter. The police department meets with homeowners associations during the year and encourages residents to inventory possessions should a disaster hit or should they be burglarized. The town notifies citizens of storm threats, necessary storm preparations, and evacuations by putting information on the town website and sending out special editions of the newsletter. There have been door to door visits from the fire department in some cases. As the town prepares for storms, we enter into contracts with private contractors*

**Kitty Hawk Town Council Minutes: November 5, 2012**

**Page 7**

*and others to provide necessary equipment and services should a storm hit and our own resources are overwhelmed.*

*It is those types of things and that is what we have included in this update. We let the State know the kind of progress we have been making during 2012 toward the goals and objectives in this plan. I will be glad to answer any questions you might have.*

MPT Perry asked if the plan needed approval by council and PD Heard replied no, it is only for information.

**6. PUBLIC COMMENT.** The General Public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the podium. Please limit comments to 3 minutes.

There were no public comments.

**7. CONSENT AGENDA.** Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.

**a.) Approval of Minutes.** October 1, 2012 Regular Meeting Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

**b.) Revenues and Expenses Report for September 2012.** *(An affirmative vote for the consent agenda will acknowledge this report.)*

**c.) Tax Pickups and Releases.** *(An affirmative vote for the consent agenda will acknowledge this report.)*

**d.) Municipal Records Retention and Disposition Schedule.** This schedule, dated September 10, 2012, will replace the May 19, 2009 schedule. The retention and dispositions schedule allows staff to dispose of town records that do not and will not have further use or value for official business, research, or reference purposes after the respective retention periods. *(An affirmative vote for the consent agenda will approve this schedule.)*

**e.) Donation to the Police Department.** Ms. Beverly Trotman has donated \$50 to the police department. It will be used for presentations on Internet Safety and Cyberbullying. *(An affirmative vote for the consent agenda will accept this donation.)*

**Councilwoman Klutz moved to approve the consent agenda. MPT Perry seconded and it passed unanimously.**

**8. ITEMS REMOVED FROM THE CONSENT AGENDA**

There were no items removed from the consent agenda.

**9. UNFINISHED BUSINESS**

**a.) Text Amendment: Proposal to add Subsection 42-252(c)(17) allowing “electronic gaming operations” as a conditionally permitted use in the Community Shopping Mall/Center (BC-3) district, provided that certain criteria are met.**

**Reid:** *I would like to have entered into the record an email from Dave Owens from the School of Government to Town Attorney Steve Michael, dated October 31, 2012. (Email entered into record below). It is a response to my question at the last meeting about whether or not we could do background checks. In reading the email, and talking to Attorney Sharp, in order to do the check it has to be done basically at the State level. The State could include a background check but since we do not have licenses, and this is a zoning issue not a licensing issue, we cannot do it. I feel very strongly this kind of operation should be. If you read the email he refers to others in the State who are currently under State legislation licensing and includes school personnel, child care providers, health care professionals, auctioneers, bail bondsmen, locksmiths and sexually oriented businesses. In my mind I cannot see how you could possibly issue licenses to a gambling operation that does not include a background check but apparently at our level we cannot do it.*

Email referenced by Councilman Reid:

**From:** "Owens, David W." <[owens@sog.unc.edu](mailto:owens@sog.unc.edu)>  
**Date:** October 31, 2012, 2:24:29 PM EDT  
**To:** Steve Michael <[Michael@ncobxlaw.com](mailto:Michael@ncobxlaw.com)>  
**Subject:** RE: Electronic Gaming/Criminal Background checks

Steve,

I have not heard much back yet, but will let you know as I do. Chris McLaughlin confirms it cannot be done as part of privilege license. Use of zoning to authorize this is uncertain given the court's recent focus in the Lanvale case on only using the tools specifically addressed in the enabling law. It can certainly be argued that conditions on how a land use is operated are common and limit the potential harms of the use to neighbors. But the concern is how far you can go from conditions affecting the physical aspects of the use (noise, light, traffic, etc.) into consumer protection, prevention of crime, and similar operational impacts that may not have a direct land use impact. I am not aware of any clear law on what the boundaries are there.

I have discussed the question of statutory authority with Frayda Bluestein and she is going to look into that a bit more and get back with me shortly. It seems to me your best bet is the GS 160A-194 authority to license businesses and forms of amusement. It may be broad enough to require those offering this type of entertainment to get a local



## Kitty Hawk Town Council Minutes: November 5, 2012

### Page 9

license with a criminal background check. The concern I have is that a number of other licensing statutes make specific reference to criminal background checks as part of various licensing and employment programs (school personnel, child care providers, health care professionals, auctioneers, bail bondsmen, locksmiths, sexually oriented businesses, etc.). The concern is that without an explicit authorization, is there some notion that these other explicit authorizations imply that such is needed. That could also play into the scope of using zoning conditions to accomplish this as well.

#### **David W. Owens**

Gladys H. Coates Professor of Public Law and Government  
School of Government  
The University of North Carolina at Chapel Hill  
CB 3330, Knapp-Sanders Building  
Chapel Hill, N.C. 27599-3330  
Phone: 919-966-4208  
Fax: 919-962-0654  
Email: [owens@sog.unc.edu](mailto:owens@sog.unc.edu)

**Klutz:** *I think this is probably a decent interim measure. We can wait out what the courts are doing and at least have a place in town where we have the zoning that allows for some type of gaming business. If I were interested in running this kind of business this would certainly deter me from trying to pursue it because of the limitations. It is an accessory use with only two machines, that kind of thing. But from the standpoint of not knowing whether the courts are going to come up with a ban on them or how long it would take for someone to figure out another way around it if they do, it might be prudent on our part to not have a lot of establishments starting up. Then we would be dealing with grandfathering. If the courts determine this is a legal business then we should address it at that point. I think this is a good way of maybe holding back until we know how the courts are going to decide.*

**Mayor Perry:** *That is sort of my feeling and I think the State legislature is going to do something anyway. We will have this in place, what has been suggested to us, until we find out what the outcome of this whole thing is.*

**MPT Perry:** *These are my comments pertaining to gaming operations in Kitty Hawk. The subject of gaming, gambling or other forms of wagering on a chance of winning money or some non-monetary thing is often an intensely personal point of view regarding good, bad, morally corrupt or the right of individual choice.*

*I have listened carefully to the reasoned and sometimes passionate arguments put forth by other councilmembers and unfortunately, with one exception, none of the citizens of Kitty Hawk have come forth in either public hearing or written comments to advise this council what a majority of the public we serve feel on the subject. Councilmember Reid put forth an argument that gaming in this instance should be a land use issue thus allowing council the decision whether to permit such use. However, the NC Court in this case has made his argument moot on the subject of gaming. Legal advice from both our attorney and the School of Government indicate we can*

**Kitty Hawk Town Council Minutes: November 5, 2012**

**Page 10**

*regulate in the best interest of the community where to allow gaming but we cannot eliminate it all together.*

*From that perspective we are faced with deciding where is the best place to allow a business that the court has determined to be legal. We must make a determination on the amount of restrictions that can legally be placed on this enterprise to prevent unnecessary lawsuit. The place chosen needs to have the least adverse effect on the people of this community and services such as policing, code enforcement or other undesirable impact.*

*As a member of your council I want to base decisions, whenever possible, on what the majority of Kitty Hawk citizens want. In this case you have not spoken so I submit the following for consideration and possible motion to action based on the research available to me. If we are going to amend the town code to allow gaming in the BC-3 district then it should be to permit a standalone business versus accessory. My reasoning is as follows: 1) the current draft text amendment is clearly intended to discourage any attempt at permitting gaming in an area of the town properly zoned for a business of this type. Such an attempt to inhibit a business sets the town up for a potentially costly lawsuit that may have merit under the court ruling on the subject; 2) gambling is all around us. The State runs a lottery but does not want other gambling. The Lions have Bingo and if one drives by on Tuesday night the parking lot is over flowing. School raffles, corporate surveys with possible prizes and the list goes on. The court has declared this a legitimate business and we must treat it as such; 3) because gaming is a type of business that may require additional policing or other services the town should add a fee per machine to cover any unintended consequence. This fee should not be for the purpose of adding general revenue but put into a separate fund marked for a specific use. This would discourage any thinking that council is permitting gaming as a means of additional general revenue.*

*Now, as to the proposed ordinance, recommend the following changes to the listed conditions: 1) strike items one, three, four and six. And I will read these into the record. Item one is "an electronic gaming operations shall only be permitted as an accessory business use to a permitted principle use." Three, "an electronic gaming operation shall not exceed 10% of the gross floor area of the principle business use." Four, "each electronic gaming operation shall be limited to a maximum of two electronic machines or devices." And six, "the electronic gaming area must be visually separated from the principle business use by a wall."*

*The second change would be to discuss item eight. I have mixed feelings on that restriction. Item eight is "signs visible from outside the business that advertise the electronic gaming operation are prohibited. Signs are allowed inside of a business to direct customers to the gaming area."*

*It seems to me that the alternative to this would be to do nothing until the Supreme Court clears up the issue once and for all. Since the issue has already been heard by the court, issuance of a final ruling should not be that far off.*

**Kitty Hawk Town Council Minutes: November 5, 2012**

**Page 11**

*Finally, I cannot in good conscience vote for the ordinance presented to us unless changes are made to insure discriminatory bias is removed from the current restrictions. Those are my thoughts.*

**Bateman:** *Gary, I am going to vote for the ordinance as it has been presented to us. The points you made are very, very clear and I agree with a lot of them. If it was an issue we were doing from here to eternity I would want it to be as specific as you were but I think this is a stop gap measure until we get a ruling from the Supreme Court. We have been advised by our attorney and the School of Government to do something. I think that is why I am going along but I do agree with a lot of the things you said long term but this is not a long term measure. We are talking about short term.*

**Mayor Perry:** *That is my feeling. It is short term until we find out what is going to happen and I think legislators are going to take this up as soon as the court rules if it is against them. Or they will take it further. I ask the attorney, should we leave it alone or pass this ordinance until a decision is made? Do you feel that we need to do something?*

**Sharp:** *I was actually at one of your earlier meetings when Steve was not here when you started talking about this. This is going back several months and it has been well thought out. The thought process with you all stating what your intentions are which is to keep track of this and follow what happens at the State level. I think you are safe if you stay with what you are doing. And then you have also made note of Mr. Reid's comments that he is concerned about the issues of licensing and those kinds of things so when the State articulates what they are going to do and vote at the legislative level and the court level you can come back or you can ... either way it goes. If it goes where the options are wide open then you have a good foundation in what Mr. Perry just mentioned here ... it is a council decision.*

**Mayor Perry:** *But it is recommended that we pass something.*

**Sharp:** *I think that is where we have gotten to. You started on this when somebody came in and made a presentation and it was discovered that we have the activity going on. That is what has led to where we are and it has been carefully laid out. You do not have to but something was recommended. It was thought at all levels we ought to pass something.*

**Mayor Perry:** *Dare County, Nags Head and probably Kill Devil Hills are doing the same thing.*

**Sharp:** *Across the State I think municipalities are doing what we are doing.*

**Mayor Perry:** *And that is what is recommended by the School of Government. To go ahead and do something?*

**Sharp:** *Correct. That is my understanding.*

**Mayor Perry:** *That is my reasoning for going along with it. Doing something until ...*



**Kitty Hawk Town Council Minutes: November 5, 2012**

**Page 12**

**Klutz:** *I do agree with you Gary. If this becomes legal and the State legislature passes something I think we need to allow a legal business to make a profit. But even if we do pass this, if somebody wants to come in and open up that business and they think this is too restrictive, there is nothing to stop them from requesting a text amendment so they can go forward with it. It is not like an automatic lawsuit that they think we are trying to show bias against their business. If they come in with a text amendment request there is a process that we can go through. We follow the process and we are still the decision authority for what happens with that business. Nothing stops people from doing that.*

**Reid:** *If I can add to that. At the last meeting I expressed my opinion from a land use standpoint. I object to being forced to do something like this and I will not argue that any more. But I will reiterate something that I have done, both as a planner and as a councilman, to advise or at least suggest when you do something like this I think you want to make it as restrictive as possible because what you are doing is opening a door. If you open the door wide open you will not close it. It will never get closed. As Emilie is saying, basically you open it and we maybe avoid a lawsuit but we are keeping it as restrictive as we possibly can and it may increase more. We may have to open it more but if you open it wide and do not put restrictions on it, which I am afraid what Gary is suggesting might be a little too wide open in my view, you cannot go back. It is virtually impossible to go back and say we are not going to let you do it. I always suggest you start out the most restrictive.*

**MPT Perry:** *The only argument I would put to that is the most restrictive is to do nothing because it is not allowed anywhere in town. That is the most restrictive.*

**Reid:** *That is what I prefer to do but ...*

**MPT Perry:** *And you can do that. It has been suggested by the School of Government to do this. It has not been mandated by anybody. Just keep that in mind. Now you all do what you want. I see where the majority is going. I told you what I am going to do so let's vote.*

**Mayor Perry:** *I would rather do nothing but I feel like somewhere we need to have our foot in the door. I feel we need to let people know when they come in we have chosen a place for it. And not having them asking about other areas districts. We have a place and if they want to come in and talk with us about further options we can do that.*

**Sharp:** *Your comments tonight are going to go in the record. Later when somebody comes in and has something to propose to the town they have a record of what the council said tonight and even the discussions over the past couple of months to refer to. I point that out and that is the way it is supposed to work.*

**Mayor Perry:** *Anybody have a motion?*

**Councilwoman Klutz** made a motion to adopt a proposed text amendment to add Section 42-252(c) (17) allowing electronic gaming operations as a conditionally permitted use in the Community Shopping Mall Center BC-3 district subject to the listed conditions. Town



council finds this amendment to be in the public interest by creating reasonable provisions for the establishment of electronic gaming operations while including appropriate safeguards and conditions to mitigate potential negative impacts from the use. Conditionally the town council finds that the proposed text amendment is not in conflict with the town's adopted CAMA land Use Plan. Councilman Reid provided a second. The vote was 4-1 with MPT Perry voting no.

#### 10. NEW BUSINESS

##### a.) Amendment to the Town Code: Sections 18-7, 24-53, 24-54 and 24-55/Carrying Concealed Weapons

**Stockton:** *Recently the town attorney sent me information relative to changes in the North Carolina General Statutes for the regulation of carrying concealed weapons. The general statute was amended in 2011 by the North Carolina legislature. In order to be compliant the town ordinance needs to be amended to reflect the definition of a municipal recreational facility and designate such. The term park is presently used in the code. The statute also allows local governments to post signs prohibiting carrying a concealed weapon. The statute now covers the prohibition of carrying a concealed handgun. The present ordinance prohibits the carrying of firearms in the parks but this prohibition can no longer be used in the ordinance and the amendment proposed is the revision of Section 18-7, Section 24-53, Section 24-54 and Section 24-55.*

**Reid:** *We can only apply this to town public property is that correct? In other words we cannot apply it to the beach because it is not town property.*

**Stockton:** *That is correct.*

**Mayor Perry:** *This just mirrors what the State regulations say.*

**MPT Perry:** *Do you understand why they changed that? The only reason I know is because I took the concealed weapons course. I did not get the permit but I took the course and the term concealed weapons never intended anything other than a handgun. It did not include knives or any other kind of implement that could be considered a weapon. It was confusing and they changed this to say "a concealed handgun" because nothing else applies. With that in mind and understanding what they are doing, I move approval of the amendment to the town code specifically Section 18.7, Section 24-53, Section 24-54 and Section 24-55 to comply with the North Carolina General Statutes 14-415.11 (c) and 14-415.23. I further authorize the mayor to sign and the town clerk to attest said ordinance amendments. Councilman Bateman seconded the motion.*

**Klutz:** *It says the town shall post signs prohibiting possession of firearms, air guns, slingshots, bow and arrows or concealed handguns. It is just the concealed handguns part that is changing and in our case we are also banning all the other things.*

**Kitty Hawk Town Council Minutes: November 5, 2012**  
**Page 14**

**MPT Perry:** *That is right. We cannot use the general term concealed weapon.*

**The vote was 5-0.**

**b.) Post-Hurricane Sandy Permit Fees**

Manager Stockton stated this has to do with waiving building permit fees from October 29, 2012 through July 29, 2013 for damage associated with Hurricane Sandy. Following Hurricane Irene last year council voted to waive building permit fees associated with storm damage for repairs for a period of six months. The fee waiver was later extended an additional three months.

**Councilman Bateman made a motion to waive permit fees associated with Hurricane Sandy damage from October 29th, 2012 to June 29th, 2013. The fee waiver is not intended to apply to new construction, additions or repairs and improvements not associated with damage from Hurricane Sandy. Councilwoman Klutz seconded it with the correction of June to July. Councilman Bateman amended it to July. Vote was unanimous, 5-0.**

**11. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER**

**a.) Report of Town's Response to Hurricane Sandy**

Manager Stockton reported that preparations for the hurricane began on Friday the 26<sup>th</sup> of October. Department heads met to ascertain the town's readiness and at the time we were functioning with normal staff levels. Additional personnel were not needed. Over the weekend staff was in contact with the county's emergency operations center and obtained briefings on what problems existed. On Sunday night the overwash began at high tide. The ocean took out sections of the dunes on the north end and severely damaged NC 12.

On Monday the water was still rising between the highways and began to flood US 158. The police department closed traffic on US 158 and detoured traffic through Bay Ridge, First Flight and Harbour Bay subdivisions. NC 12, Lindbergh Avenue, and many of the side streets between the highways were also flooding. Six pumps from Chesapeake and six pumps from NCDOT were received. NCDOT positioned three pumps at the bathhouse in an attempt to draw down the flood waters on US 158. In anticipation of pumping, the town obtained a permit from the Division of Water Quality.

On Tuesday US 158 remained closed and attention shifted to the possibility of flooding from the sound side. Luckily it did not flood as expected. More pumps were positioned on the streets between the highways and NCDOT continued to clear the sand from NC 12.

On Wednesday morning the police department was able to open US 158 to traffic. As of Thursday some of the side roads had enough water receded that traffic was allowed to access the neighborhoods. NC 12 remained closed due to pumping and removal of sand. On Thursday

## **Kitty Hawk Town Council Minutes: November 5, 2012**

### **Page 15**

there were 15 pumps operating to remove the flood water. Businesses were allowed to open along NC 12 but persons were not allowed to access the businesses from NC 12.

On Friday we continued to pump with 12 pumps on NC 12 which was clear from White Street to Kitty Hawk Road. On Saturday, November 3<sup>rd</sup>, there were 10 pumps on site and RPC was contracted by NCDOT to start working in the distressed section of NC 12, rebuild the dune and remove the sand from NC 12 north of Fonck Street. On Sunday the water had receded at most locations and the number of pumps was reduced to one.

It was quite an effort and Manager Stockton recognized the fine work that was done by the fire department, police department, public works, planning department, finance department and administrative staff. Everyone did an exceptional job in handling all aspects of the storm and quite a few residents complimented the employees.

He asked that residents start putting their debris out for pick up.

#### **b.) Town Utilization of YouTube for Communication Purposes**

Manager Stockton said the town now has the ability to utilize YouTube. Videos of the council meetings and other town related events will be shown. There is a link from the town website to allow visitors to link to YouTube.

#### **c.) Division of Environment and Natural Resources**

Manager Stockton reported as a follow up to the meeting with the Division of Environment and Natural Resources in September, John DeLucia sent a letter and "Preamble and Justifications for Policy Modifications" to see if the town can obtain a modification of its present Stormwater Flooding Relief Discharge Policy created in 2003. If successful, this will allow us to procure permits needed to construct stormwater improvements for the properties between the highways. Albemarle and Associates has taken water samples to provide further evidence to the Division of Water Quality that pumping needs to begin as soon after a storm event as is possible.

#### **d.) Compliment about Performance of Officer Deaton**

Manager Stockton said the town received a compliment from Eileen Chaney of Elizabeth City about the professionalism of Officer Deaton. Mrs. Chaney was in an accident on September 16<sup>th</sup> of this year and she said the police department's response was timely and Office Deaton was professional, courteous and compassionate.

#### **e.) Compliment to the Fire Department**

Manager Stockton said the town received a compliment from Susie Kraus and David Edwards. They wrote to thank the Kitty Hawk Fire Department for saving their home on October 30<sup>th</sup>. The fire erupted in the utility room and the fire department was able to respond in time to save the rest of the house.

**Kitty Hawk Town Council Minutes: November 5, 2012**  
**Page 16**

**f.) State Insurance Assistance Center**

Manager Stockton announced the Insurance Commissioner has scheduled an Insurance Assistance Center at the town hall this Thursday and Friday from 8:30 a.m. to 5:00 p.m. It is for people who have questions or complaints about filing insurance claims in the wake of Hurricane Sandy.

**12. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY**

There were no further reports or comments.

**13. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL**

Councilman Reid expressed his thanks to the staff during the storm and asked if there is a governmental section on YouTube.

Manager Stockton replied there is a YouTube government channel for the videos.

Councilman Bateman thanked the town employees for what they did during the storm and stated they did an outstanding job. He also announced the marathon is this weekend and there are between eight and ten thousand runners. He encouraged people to get out cheer them on.

Councilwoman Klutz said all her neighbors have been talking about how well the town has responded and they truly appreciate it. Also, people have asked about the sand that is removed on NC 12 and taken to the distressed area. They want to know if any will be left for rebuilding the dune in the northern part of town. She has always answered it is the State's road and they are going to do what they have to do.

Manager Stockton offered to check into it.

MPT Perry agreed with fellow councilmembers and thought the department's performed the way they should have. He heard good things and people appreciated the kindness shown to them.

Mayor Perry said everybody knew what was going on and was impressed with the good job everyone did.

Councilwoman Klutz added DOT has been wonderful. They got all the pumps for the town and thought the town should send them a thank you letter.

**14. PUBLIC COMMENT**

There were no public comments.

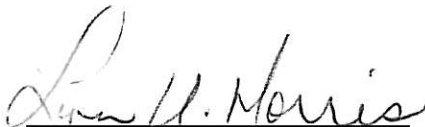



**Kitty Hawk Town Council Minutes: November 5, 2012**  
**Page 17**

**15. ADJOURN**

**Councilman Bateman made a motion to adjourn. MPT Perry seconded and it passed unanimously. Time was 7:12 p.m.**

These minutes were approved at the *December 3, 2012* council meeting.

  
Lynn U. Morris, Town Clerk

  
Clifton G. Perry, Mayor